

arrangements were "properly the subject . . . [of] state regulatory jurisdiction."<sup>85/</sup> The Commission concluded that compensation arrangements between cellular carriers and LECs were "largely a matter of state, not federal concern [because] *cellular carriers are generally engaged in the provision of local, intrastate, exchange telephone service . . .*"<sup>86/</sup>

Similarly, in further elaborating its policy on LEC-to-cellular interconnection in the *1987 Cellular Interconnection Declaratory Ruling*, a post-Louisiana PSC decision, the Commission held that, while it has jurisdiction over the physical interconnection between LECs and cellular licensees, the actual costs and charges for interconnection "are suited to dual intrastate and interstate regulation."<sup>87/</sup> The Commission reasoned that the costs and charges associated with LEC-to-cellular interconnection are separable between the state and interstate jurisdiction "in a manner similar to the separations process of Section 410(c)."<sup>88/</sup> The Commission decided that LECs and cellular licensees could negotiate a separations-like allocation of intrastate and interstate interconnection costs, but did not mandate one, noting that "[t]he Part 69 system of recovery of interstate costs and imposition of access charges do[] not apply to cellular carriers when they are providing only local exchange service."<sup>89/</sup>

---

<sup>85/</sup> 59 Rad. Reg. 2d at 1285.

<sup>86/</sup> See 59 Rad. Reg. 2d at 1284 (emphasis added).

<sup>87/</sup> See 2 FCC Rcd at 2912.

<sup>88/</sup> See *id.*

<sup>89/</sup> See 2 FCC Rcd at 2918 n.28.

In reaching its decision, the Commission also relied on the jurisdictional analysis of its initial *Access Charge Order*.<sup>90/</sup> There, the Commission determined that cellular carriers (then called "radio common carriers" ("RCCs")) were not subject to the interstate access charge system established by the *Access Charge Order* because:

[t]he RCCs provide "exchange service" under Sections 2(b) and 221(b) of the Communications Act, and we have consistently treated the mobile radio services provided by RCCs and telephone companies *as local in nature*.<sup>91/</sup>

The Commission further observed that "RCCs provide interstate services only to the extent that their facilities may be used to originate or terminate toll calls."<sup>92/</sup>

Unlike the Commission's analysis in the *1986 Cellular Interconnection Order*, the *1987 Cellular Interconnection Declaratory Ruling* and the *Access Charge Order*, all commercial mobile radio services, including cellular licensees, are now regarded as interstate service providers under the Budget Act. Also contrary to the conclusion in these early Commission orders that cellular carriers provide "local exchange service," the Budget Act specifically exempts cellular licensees from state regulation as local exchange service providers.<sup>93/</sup> Moreover, the recently enacted Telecommunications Act of 1996 explicitly exempts all commercial mobile radio services from the statutory definition of a "local

---

<sup>90/</sup> See *id.* (citing *MTS/WATS Market Structure*, Memorandum Opinion and Order, CC Docket No. 78-72, Phase I, 97 F.C.C.2d 834, 881-883 (1984) ("*Access Charge Order*").

<sup>91/</sup> See 97 F.C.C.2d at 882.

<sup>92/</sup> See *id.*

<sup>93/</sup> States are barred from regulating rates or entry of CMRS providers unless market conditions have become non-competitive and CMRS "is a replacement for landline telephone exchange service for a substantial portion of the telephone landline exchange service within such State." 47 U.S.C. § 332(c)(3)(A).

exchange carrier" unless the Commission finds that CMRS should be included in the definition of a LEC.<sup>94/</sup>

**d. The Telecommunications Act of 1996 Confirms the Conclusion That the Commission Has Jurisdiction Over Formerly Intrastate LEC-to-CMRS Interconnection Traffic Without Regard to a *Louisiana* PSC Inseverability Analysis.**

The TCA introduces requirements for LEC provision of interconnection and establishes a new general class of common carrier entity that is entitled to interconnection called a "telecommunications carrier."<sup>95/</sup> Because CMRS providers generally fit the definition of "telecommunications carrier", the question arises whether the interconnection provisions of the TCA alter the Commission's jurisdiction over LEC-to-CMRS interconnection under the Budget Act. Review of the interconnection provisions of the TCA supports the conclusion that the Commission has exclusive jurisdiction over LEC-to-CMRS interconnection under the Budget Act.

---

<sup>94/</sup> See 47 U.S.C. § 153(44). The Commission would have to find both that the CMRS market is not competitive and that CMRS is a replacement for telephone exchange service under Section 332(c)(3)(A) to redefine CMRS as a LEC. Neither condition obtains today.

<sup>95/</sup> "Telecommunications carrier" means any provider of telecommunications services, except that such term does not include aggregators of telecommunications services. A telecommunications carrier shall be treated as a common carrier under the Act only to the extent that it is engaged in providing telecommunications services, except that the Commission shall determine whether the provision of fixed and mobile satellite services shall be treated as common carriage. 47 U.S.C. § 153(49), TCA, at § 3. "Telecommunications service" means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used. 47 U.S.C. § 153(51), TCA, at § 3. "Telecommunications" means "the transmission, between or among points specified by the user, of information of the user's own choosing, without change in the format or content of the information as sent and received." 47 U.S.C. § 153(48), TCA, at § 3.

Section 251 of the TCA governs LEC provision of interconnection to telecommunications carriers. In particular, Subsection 251(b)(5) imposes an obligation on all LECs to establish reciprocal compensation arrangements for the transport and termination of telecommunications.<sup>96/</sup> In addition, Section 251(c)(2) imposes a duty upon all "incumbent"<sup>97/</sup> LECs ("ILECs") to provide just, reasonable and nondiscriminatory access to unbundled network elements, at any "technically feasible point within the carrier's network."<sup>98/</sup> All CMRS providers are "telecommunications carriers" within the meaning of the TCA, and, as such, are entitled to interconnection features such as reciprocal compensation and unbundled access, among others, from ILECs.

In interpreting the status of the FCC's jurisdiction under Section 251, the "savings provision" in Section 251(i) provides important statutory guidance: "Nothing in [Section 251] shall be construed to limit or otherwise affect the Commission's authority under [S]ection 201."<sup>99/</sup> Thus, the FCC's authority to order interconnection under Section 251 is

---

<sup>96/</sup> See 47 U.S.C. § 251(b)(5), TCA, at § 101..

<sup>97/</sup> Incumbent LECs are defined as including all traditional LECs that, upon enactment, have interstate access charge tariffs on file or are members of the National Exchange Carriers Association's ("NECA") interstate access tariff. See 47 U.S.C. § 251(h), TCA, at § 101. All telephone companies that participate in the distribution of carrier common line ("CCL") revenue requirement, pay long term support to NECA common line tariff participants, or receive payments from the transitional support fund administered by NECA are deemed to be members of the association. 47 C.F.R. §69.601(b). A person or entity that, on or after enactment, is a successor or assignee of a NECA member is also an incumbent LEC.

<sup>98/</sup> See 47 U.S.C. § 251(c)(2).

<sup>99/</sup> 47 U.S.C. § 251(i), TCA, at § 101.

*in addition to* that it already possesses under Section 201 of the Act. The legislative history regarding Section 251(i), moreover, supports this reading:

New subsection 251(i) makes clear the conferees' intent that the provisions of new section 251 are in addition to, and in no way limit or affect, the Commission's existing authority regarding interconnection under section 201 of the Communications Act.<sup>100/</sup>

Accordingly, any authority granted the FCC under the interconnection provisions of Section 251 amplifies that which the FCC already possessed prior to the enactment of the TCA. Section 251 of the TCA, therefore, supports and "in no way limits or affects" the conclusion that the Budget Act gave the FCC exclusive jurisdiction to regulate all interstate and intrastate aspects of LEC-to-CMRS interconnection traffic.

Accordingly, the provisions of the Telecommunications Act of 1996, taken as a whole, support the conclusion that the FCC has exclusive jurisdiction over all LEC-to-CMRS interconnection rates and traffic. The interconnection provisions of Section 251, in conjunction with the "savings clause" in Section 251(i), explicitly state that the FCC's authority to order ILECs to provide reciprocal compensation and unbundled access to network elements is in addition to authority it already possesses under Section 201(a) of the Communications Act of 1934. The provisions regarding state approval of interconnection agreements under Section 252 of the TCA are not inconsistent with a finding that the Commission has exclusive jurisdiction over intrastate LEC-to-CMRS interconnection traffic. LEC-to-CMRS interconnection negotiations are outside of the scope of the state-approval process required by the TCA. LEC interconnection provided to CMRS providers is

---

<sup>100/</sup> See Conference Report, at 123.

outside the scope of the TCA's provisions regarding state-approved interconnection agreements. Finally, the provisions of the TCA authorizing the Commission to preempt state and local barriers to entry and to forbear from applying any regulation to telecommunications carriers preserves, rather than limits, the existing preemption and forbearance authority already vested in the Commission under the Budget Act of 1993.

**e. Sound Public Policy Considerations Support a Finding That the Commission Has Exclusive Jurisdiction To Mandate a Uniform, Federal Bill-and-Keep Interconnection Policy.**

In addition to the jurisdictional mandate already delegated by Congress to the Commission by virtue of the Budget Act and TCA, public policy considerations also justify the Commission's establishment of a uniform federal mandate regarding LEC-to-CMRS interconnection rates. Absent a conclusion that the Budget Act and TCA reserve to the Commission exclusive authority to mandate an interconnection policy regarding all interstate and intrastate LEC-to-CMRS traffic, the Commission will have to engage in economically burdensome and legally unnecessary preemption proceedings in each state to establish jurisdictional authority that Congress has already seen fit to delegate. The Commission has a compelling interest in promoting wireless market competition and efficient LEC-to-CMRS interconnection by means of a uniform federal bill-and-keep policy. Finally, if the Commission fails to exercise authority granted it under the Budget Act and the TCA to establish a uniform, federal bill-and-keep policy for the entire LEC-to-CMRS interconnection, then existing LEC rates and practices will forestall the competitive delivery of advanced wireless services to customers.

Adoption of a uniform federal interconnection policy will not harm any state interest. Under the Budget Act, all commercial mobile radio services are jurisdictionally interstate services subject to the FCC's exclusive jurisdiction. All LEC interconnections, even if physically within the boundaries of a state, used in the origination or termination of CMRS calls are jurisdictionally interstate in nature. The states do not have any legal interest in regulating interstate services.<sup>101/</sup>

To establish a federal bill-and-keep interconnection model by means of case-by-case preemption would be both unnecessary and competitively detrimental, given that Congress delegated to the Commission by means of the Budget Act authority to regulate intrastate and interstate LEC-to-CMRS interconnection. Several states have imposed regulations upon CMRS providers that would defeat a federal bill-and-keep policy and thereby hamper the market-based incentives that bill-and-keep interconnection would produce.<sup>102/</sup> If the

---

<sup>101/</sup> Pursuant to Section 2(a) of the Act, the Commission has "occupied the field" with regard to interstate telecommunications. See *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230, 57 S.Ct. 1146, 1152 (1947); *Sprint Corp. v. Evans*, 75 Rad. Reg. 2d (P&F) 307, 313-4 (M.D. Ala. 1994); see also note 62 *supra*.

<sup>102/</sup> See Alaska-3 Cellular LLC d/b/a Cellular One, Motion for Declaratory Ruling Concerning Preemption of Alaska Call Routing and Interexchange Certification Regulations As Applied To Cellular Carriers, File No. WTB/POL 95-2, filed on September 22, 1995 ("Alaska-3 Motion"); Comcast Corporation, Cox Enterprises, Inc., Joint Comments in Support of Alaska-3 Motion, filed on December 1, 1995; *Connecticut DPUC Wireless Mutual Compensation Order*, at note 83 *supra*; *Investigation Into the Rate for Interconnection of Mobile Service Providers With Facilities of Local Exchange Companies*, Docket No. 940235-TL, Order No. PSC-95-1247-FOF-TL (Florida Pub. Util. Comm'n, released October 11, 1995) ("*Florida PSC Order*") (LECs are prohibited from compensating wireless providers for terminating LEC-originated traffic on wireless networks); *Implementation of the Omnibus Budget Reconciliation Act of 1993*, Docket No. L-00950104 (Pennsylvania Pub. Util. Comm'n, released June 8, 1995) (requires wireless carriers to make annual "informational filings"); Pittencrieff Communications, Inc., Petition for Declaratory Ruling Regarding Preemption of Texas Public Utility Regulatory Act of 1995, filed on

Commission otherwise chooses to implement a bill-and-keep policy via case-by-case preemptions, competitive pricing incentives for interconnection will be suppressed and pro-competitive benefits to consumers in the wireless marketplace will be unacceptably delayed.

There is ample evidence, moreover, that all commercial mobile radio services, and the interconnection provided by LECs to them, is physically interstate in nature. Unlike the classical situation requiring jurisdictional separations, such as allocation of costs associated with pay telephone service used to originate and terminate both local and interstate toll calls,<sup>103/</sup> there is no local component to commercial mobile radio services. Rather, commercial mobile radio services operate "without regard to state boundaries."<sup>104/</sup> States, therefore, lack any legal or policy interest in regulating LEC-to-CMRS interconnection.

Moreover, the call termination rates charged by LECs to CMRS providers under present arrangements are orders of magnitude higher than the actual incremental cost of providing call termination.<sup>105/</sup> Requiring CMRS providers to pay such high interconnection rates to the LECs will forestall effective wireless competition, and inhibit delivery of advanced wireless services to consumers.

---

January 11, 1996.

<sup>103/</sup> See *Smith v. Ill. Bell Tel. Co.*, 282 U.S. 133, 51 S.Ct. 65 (1930).

<sup>104/</sup> See House Report, at 260.

<sup>105/</sup> Bell Atlantic currently charges Comcast Cellular an interconnection charge that is 1250 percent above the average incremental cost of providing interconnection services. See discussion at notes 8-10 *supra*.

### III. INTERCONNECTION FOR THE ORIGINATION AND TERMINATION OF INTERSTATE INTEREXCHANGE TRAFFIC

The Notice proposes to allow CMRS providers to recover access charges from IXC's for terminating interstate interexchange traffic on the CMRS network. This is an appropriate issue to be resolved in conjunction with the long term interconnection issues raised by the Commission in the Notice and should, therefore, be deferred until a later phase of this proceeding.

**IV. THE COMMISSION MUST APPLY ITS BILL-AND-KEEP  
INTERCONNECTION POLICIES TO CELLULAR, PCS AND ESMR  
PROVIDERS.**

The Notice seeks comment on whether the proposed interconnection policies should apply to interconnection between LECs and (i) broadband PCS providers only; (ii) broadband PCS, cellular telephone, SMR, satellite telephony and other CMRS providers of two-way, point-to-point voice communications; or (iii) all CMRS providers.<sup>106/</sup> The Commission must permit cellular, PCS and enhanced specialized mobile radio ("ESMR") to be eligible for the interim bill-and-keep interconnection proposals to be adopted in this proceeding.

Allowing cellular, PCS and ESMR licensees to reap the benefit of efficient interconnection will promote local telephone competition and stimulate new entry. There are no legal or policy reasons against inclusion of these licensees within the interconnection proposals framed in the Notice. Adoption of such a policy with respect to cellular, PCS and ESMR licensees, moreover, will promote parity of regulatory treatment. As the Notice correctly observes, focusing on voice-based cellular, PCS and ESMR licensees will "allow [the Commission] to tailor [its] policies more carefully to the particular subset of carriers or services involved."<sup>107/</sup>

---

<sup>106/</sup> Notice, at ¶ 118.

<sup>107/</sup> See Notice, at ¶ 120.

**V. RESPONSES TO INITIAL REGULATORY FLEXIBILITY ANALYSIS**

[this section left intentionally blank]

**VI. OTHER**

[this section left intentionally blank]

## VII. CONCLUSION

Comcast urges prompt adoption of the Notice's interim bill-and-keep interconnection proposals. In Comcast's view, adoption of an interim bill-and-keep policy "may be the single biggest step the FCC has taken so far to promote local telephone competition", a step that will "dramatically change the economics of interconnection."<sup>108/</sup>

Bill-and-keep will immeasurably enhance wireless competition by redressing serious flaws in current interconnection arrangements between ILECs and CMRS providers. Current rates charged by ILECs for termination of wireless calls are grossly in excess of incremental cost. In addition, ILEC terms and conditions of interconnection are discriminatory and unreasonable.

Symmetry in compensation arrangements, as the Notice acknowledges, is essential to deter such anticompetitive discrimination by ILECs. Symmetry would require that ILECs and CMRS providers be able to recoup their respective network costs. Today, an ILEC-affiliated wireless carrier's payment of an uneconomically high interconnection rate may be offset by the ILEC parent's realization of additional interconnection revenues. In contrast, non-affiliated wireless providers incur a non-recoverable loss from paying to the ILEC an uneconomically high interconnection rate, absent a requirement of symmetry.

Adoption of an interim alternative to bill-and-keep such as peak-load pricing will have a negative impact on wireless competition. Correctly identifying peak traffic in quickly evolving wireless markets would sap administrative resources without necessarily

---

<sup>108/</sup> See Comcast Corporation, Press Release, December 15, 1995 (quoting Comcast President, Brian L. Roberts).

resulting in, or preserving, an economic call termination rate. Instead, the Commission must remain focused on its tentative conclusion that interim application of bill-and-keep to LEC-to-CMRS interconnection provides an administratively and economically efficient pricing mechanism.

Bill-and-keep should be extended to CMRS providers whether they interconnect at the ILEC end office or the tandem switch. Limiting the efficiencies of bill-and-keep pricing only to the ILEC end office would disadvantage CMRS providers whose network architectures necessitate fixing the point of interconnection at the tandem switch or another location other than the ILEC end office. By making bill-and-keep available at the ILEC end office or the tandem switch, moreover, the Commission will stimulate diversity in networking architectures and wireless service provider infrastructure.

The procedures employed to implement LEC-to-CMRS interconnection should be tailored to the scope and availability of bill-and-keep. With respect to those aspects of LEC-to-CMRS interconnection where the Commission ultimately decides to require a bill-and-keep, such as call termination at the ILEC end office or tandem, contract negotiation principles are appropriate. Absent a bill-and-keep requirement, however, the potential for ILEC abuse of market power requires that the full panoply of Commission tariffing notice periods and cost standards apply as necessary safeguards to the development of LEC-to-CMRS interconnection agreements.

Under the Budget Act, the Commission possesses exclusive jurisdiction to establish a uniform bill-and-keep mutual compensation policy for LEC-to-CMRS interconnection. The Budget Act vested the Commission with exclusive jurisdiction over CMRS providers by

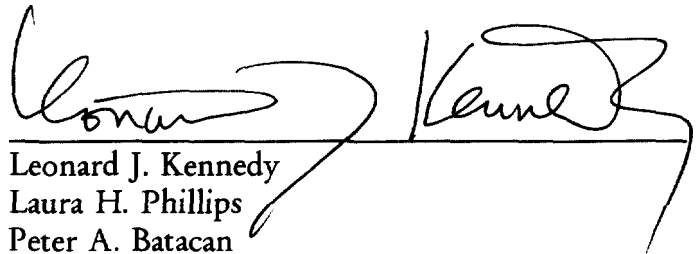
"federalizing" all wireless service providers. The rates, terms and conditions of CMRS interconnection are thus entirely within the Commission's interstate jurisdiction. The Budget Act also removed any LEC-to-CMRS interconnection previously defined as "intrastate" entirely from within the boundaries of state jurisdiction. There is, therefore, no need for the Commission to "preempt" state ratemaking authority by engaging in a *Louisiana PSC* inseverability analysis because the jurisdictionally interstate nature of all LEC-to-CMRS interconnection "occupies the field" to the exclusion of any state jurisdiction. The TCA does not alter this conclusion.

Finally, making bill-and-keep available to cellular, PCS and ESMR licensees will foster the widespread distribution of seamlessly interconnected voice-based wireless networks. The Commission's proposal to establish an interim bill-and-keep interconnection policy thus promises to chart an historic and pro-competitive course for

the future of the wireless industry and the ultimate development of a truly seamless,  
nationwide wireless and landline public switched telephone network.

Respectfully submitted,

COMCAST CORPORATION



Leonard J. Kennedy  
Laura H. Phillips  
Peter A. Batacan

Its Attorneys

DOW, LOHNES & ALBERTSON  
A Professional Limited Liability Company  
1200 New Hampshire Avenue, N.W.  
Suite 800  
Washington, D.C. 20036-6802  
(202) 776-2000

March 4, 1996